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As of: 2020/08/26 05:00:11

Drafter: Corina Hach, 406-444-4026

67th Legislature

PD 0014

**** BILL NO. ****

WATER POLICY INTERIM
COMMITTEE 2019-20

INTRODUCED BY ****

BY REQUEST OF THE ****

October 13, 2020

Exhibit 5

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE PROCESS FOR WATE RIGHT OWNERSHIP
UPDATES; AMENDING THE PENALTY FOR NONCOMPLIANCE; AND AMENDING SECTIONS 85-2-424
AND 85-2-431, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. (1) Except in the case of a transfer of real property served by a public service water
supply, when a person presents for recording a deed or other instrument evidencing a transfer of real property,
the realty transfer certificate must contain a water rights disclosure in which the transferor shall acknowledge, at
or before closing or transfer of real property, whether or not any water rights are associated with the property to
be transferred and whether or not any water rights will transfer with the real property.

(2) (a) ~~If the realty transfer certificate discloses that the water rights will transfer with the property, the
department's records must be updated. The department shall update its records to reflect the purchaser of the
property as the new ownership of the water right based on within 30 days of receipt of either:~~

(i) information received from the department of revenue if:

(A) the transferor of the property is the same as the owner of record for the water rights;

(B) the transferor conveys the entirety of the property associated with the place of use; and

(C) the department has not received a form pursuant to subsections (3), (4), or (5) of this

section; or

(ii) an a complete ownership update form provided by the department and submitted to the department
~~with a copy of the deed.~~

(b) If the department receives information from the department of revenue that a transfer has occurred
and the transferor of the property is not the same as the owner of record for the water rights, the department

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1 shall within 30 days of receipt of the information from the department of revenue notify each party indicated as
2 a transferee that:

3 (i) the party is required to submit a complete ownership update form and the required fee within 60
4 days of the notice; and

5 (ii) ownership of the water right will not be changed in the department's records until the complete
6 ownership update form is provided.

7 ~~(b)(c)~~ The appropriate fee must be paid at closing or upon completion of the transfer of real property
8 as provided in 85-2-426.

9 ~~(e)(d)~~ The transferee of a water right, after receiving notice as provided in subsection ~~(2)(d)~~ (2)(e), is
10 responsible for compliance with this section.

11 ~~(d)(e)~~ If the department receives notice from the department of revenue that a property transfer has
12 occurred and the proper fee was not received by the department, the department shall send a notice to the
13 transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department
14 may assess a penalty against the transferee pursuant to 85-2-431.

15 (3) (a) Except as provided in subsection (3)(b), if-if the realty transfer certificate discloses the division
16 of the place of use of a water right among separate parcels, ~~the person dividing each transferee receiving a~~
17 portion of the water right shall ~~complete and~~ file with the department a complete water right ownership update
18 form, a map, a copy of recorded deed or deeds or any other instruments confirming the transfer, and the
19 required fee.

20 (b) If a complete water right ownership update form is not filed by all parties pursuant to subsection
21 (3)(a), the parties must be reflected as co-owners on the water right.

22 (4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department ~~,~~
23 ~~on~~ a complete form provided by the department, ~~information~~ describing the exempting of the water right and the
24 appropriate fee.

25 (5) If a person severs a water right from appurtenant property without ~~selling~~ conveying the property,
26 the person shall file with the department ~~on~~ a complete form provided by the department ~~,~~ ~~information~~
27 describing the severance and the appropriate fee.

28 (6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water

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right is being transferred, severed, divided, or exempted (reserved), the clerk and recorder may not record the deed or instrument unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form provided by the department and signed by the transferor and transferee, that states either:

(a) that the documents and fee necessary to comply with this section are held in escrow, in which case the certification must also be signed by the escrow agent; or

(b) if there is no escrow, that the transferor and transferee certify that they have prepared-filed or mailed the required documents ~~and will send the required documents~~ and fee with or to the department ~~within 60 business days of recording, in which case the certification must also require the transferee to acknowledge that failure to file the appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-431 against the transferee.~~

(7) Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:

"WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording."

(8) Except as provided in subsection (2), the department shall update its records to reflect new ownership without collection of a transfer fee within 30 days of:

(a) receiving a withdrawal of a water right, or an interest in a water right, by an owner thereof;

(b) receiving an order to the department from the water court or other court of competent jurisdiction that modifies or terminates ownership of a water right; or

(c) learning of a clerical error resulting from an error on a water right ownership update.

(9) In the event of a dispute over the ownership of a water right, the department shall, within 30 days of being notified of the dispute, certify the matter to the water court or other court of competent jurisdiction for resolution.

(10) The department may not delay updating ownership based on non-payment of transfer fees by a

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1 transferee. The department's sole remedy in the event of non-payment of transfer fees is to assess a penalty
2 and seek collection from the transferee pursuant to 85-2-431.

3 (11) For the purposes of this section, "complete" means that the information requested in the form has
4 been supplied together with a copy of the executed deed or deeds or any other instruments confirming the
5 transferee's ownership of each water right listed on the form. The department shall notify the transferee of any
6 deficiencies causing the form to be deemed not complete within 60 days of submission."

7
8 **Section 2.** Section 85-2-431, MCA, is amended to read:

9 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a
10 civil penalty of not more than ~~\$75~~ \$300.

11 (2) An action to recover the penalty ~~must~~ may be brought by the department and filed in the district
12 court for the first judicial district. At the discretion of the department, the judgment may be certified to the district
13 court in the county where the real property is located.

14 (3) The department is entitled to recover its reasonable costs for recovering the penalty, including but
15 not limited to attorney fees or charges assessed by a collection agency.

16 ~~(3)(4)~~ Any penalty fee collected under this section must be deposited in the water right appropriation
17 account provided for in 85-2-318."

18
19 - END -